IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.10.2007

CORAM

THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN
AND
THE HONOURABLE MRS.JUSTICE CHITRA VENKATARAMAN

W.P.Nos.40355 to 40360 of 2002

W.P.No.40355 of 2002 to W.P.40360 of 2002

M/s.Mono Products
rep.by its Partner Mr.Abhay Parakh
No.23, Avadhanam Pappaiah Road
Chennai - 600 112. .. Petitioner in all Wps

versus

1. The Registrar
   Tamilnadu Taxation Special Tribunal
   Singaravelan Maligai, II Floor
   Chennai - 600 108

2. The Commercial Tax Officer
   Purasawalkam Assessment Circle
   Third Floor, Kuralagam Annexe
   Chennai - 600 108

3. The Assistant Commissioner (CT)
   Zone IV Chennai. .. Respondents in all WPS

This Petition filed under Article 226 of constitution of India praying for the issuance of a writ of certioarified Mandamus call for the records of the first respondent 1. in O.P.No.582/02 dated 13.9.2002 and the order of the second respondent in TNGST-092246/92-93 dated 20.5.2002 (2) O.P.No.583/02 dated 13.9.2002 and the order of the second respondent in TNGST092246/93-94 dated 20.5.2002 (3) O.P.No.584/02 dated 13.9.2002 and order of the second respondent in TNGST 092246/94-95 dated 20.5.2002 (4) O.P.No.585/02 dated 13.9.2002 and consequential order of the second respondent in TNGST 092246/95-96 dated 20.5.2002 (5) O.P.No.586/02 dated 13.9.2002 and consequential order of the second respondent in TNGST 092246/96-97 dated 20.5.2002 (6)O.P.587/02 dated 13.9.2002 and consequential order of the second respondent in TNGST 092246/97-98 dated 20.5.2002 and quash the same and further direct the second/ third respondents to allow the petitioner to avail the full deferral of the sales Tax

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granted by TIIC in Eligibility certificate Nos.IFST/D/031/1X1E/92-93, IFST/107/1X/E/D/93-94 and IFST/D/003/IX/AMB/94-95 under G.O.Ms.No.500 dated 14.5.1990 in view of the law laid down by this Honourable Court in 98 STC 125 and W.A.No.509/94 dated 22.2.1995.

For Petitioner : Mr.V.Sundareswaran

For Respondents : Mr.Haja Naziruddeen, Spl.G.P.(Taxes)

ORDER

(Order of the Court was made by CHITRA VENKATARAMAN,J.)

The writ petitions are filed against the orders of the Tribunal herein for quashing the order demanding interest on the ground that the assessee had paid the base level sales tax belatedly while availing the benefit of deferral of sales tax. Admittedly, the deferral of sales tax was granted to the petitioner in respect of three expansion units on different dates, the first of the two fell under consideration under G.O.Ms.No.500 Industries (MIG-II) Department dated 14.5.1990 and that of the third unit was granted on 6.10.1994 under G.O.Ms.No.119, Commercial Taxes and Religious Endowments Department dated 13.4.1994. It was pointed out by the third respondent that the assessee had not maintained the payment on base level sale figure as per G.O.Ms.No.119, Commercial Taxes and Religious Endowments Department dated 13.4.1994. Hence, the petitioner herein was liable to pay the tax to the tune of Rs.27 lakhs. Faced with the threat of recovery, the assessee remitted a sum of Rs.20 lakhs; however it approached the Tamil Nadu Taxation Special Tribunal. In O.P.No.242 to 244 of 1999, by order dated 14.6.1999, the Tribunal pointed out that as per the Government Order, the assessee would be entitled to the benefit of deferral of tax only over and above the base level payment of tax. While setting aside the order of demand, the Tribunal directed the second respondent to work out the actual loss as per the eligibility certificate and the deed of agreement and if anything was due, the assessing officer was entitled to re-work and demand the outstanding amount after of issue fresh notice. Thereafter, once again recovery proceedings were taken against the petitioner demanding for interest on the amounts which were paid beyond the date. Aggrieved by the same, the assessee once again approached the Tamil Nadu Taxation Special Tribunal. However, by order dated 13.9.2002 in O.P.Nos. 582 to 587 of 2002, the Tamil Nadu Taxation Special Tribunal dismissed the O.Ps filed by the assessee on the ground that the demand for the penal interest was with reference to the late payment of the base amount of tax and the excess availed thereupon under the eligibility

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granted and the agreement entered into by the assessee. Consequently, the Tamil Nadu Taxation Special Tribunal held that the demand for penalty under Section 24(3) was in order and thereby it confirmed the orders of the second respondent. The said orders of the Special Tribunal are now under challenge in the writ petitions before this Court.

2. Learned counsel appearing for the petitioner/assessee pointed out that the assessee had the benefit of the eligibility certificate issued under G.O.Ms.No.500, Industries (MIG-II) Department dated 14.5.1990, as early as 7.5.1992 and again on 4.10.1993 for a sum of Rs.17.32 lakhs. The deferral period covered under the two eligibility certificates are from 1992-93 to 2000-2001 repayable in 2001-2002 to 2009-2010 and for the deferral period from 1991-1992 to 2000-2001 repayable from 2000-2001 to 2009-2010 respectively. He submitted that the first expanded unit was set up in the year in 1992.

3. A perusal of the eligibility certificates granted in respect of these two expansion units show that the same are issued subject to the conditions mentioned as per G.O.Ms.No.500 Industries (MIG-II) Department dated 14.5.1990. The eligibility was granted by T.I.I.C. vide its proceedings dated 7.5.1992 for a sum of Rs.13.01 lakhs for the period 5.3.1992 to 4.3.2001, repayable from the assessment year 2001-02 to 2009-10. Accordingly, the assessee entered into a written agreement with the third respondent on 4.6.1992. The assessee filed an amendment petition on 21.6.1993 before the T.I.I.C. to amend the certificate dated 7.5.1992. The amended certificate was accordingly issued on 4.10.1993 by including the additional investment by enhancing the deferral amount by 4.31 lakhs. Thus the total deferral of sales tax of Rs.17.32 lakhs was for the period 1991-92 to 2000-01, repayable from 2000-01 to 2009-10. The third respondent accordingly entered into an agreement on 30.1.1994.

4. As regards the second expansion Unit, the petitioner herein obtained an eligibility of deferral of sales tax on 6.10.1994 for a total amount not exceeding Rs.12.33. Lakhs. The deferral period was to start from 1994-95 to 1.4.2003 to 30.4.2003. The repayment schedule was to start from 2003-04 to 1.4.2012 to 30.4.2012. In terms of this, eligibility agreement was entered into between the petitioner and the third respondent on 17.4.1995. The agreement with reference to this eligibility, referred to the necessity of maintaining the base level production arrived at on the basis of the last three years preceding the date of commencement of the deferral. It was also specified that the company would go on paying the tax to the level of base volume of production/sales and that once it reached this level, any further liability would be eligible for deferral of sales tax. It may be noted that except for

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the agreement dated 17.4.1995, the earlier agreement or the eligibility certificate did not touch on the payment of base level production.

5. It is stated that as per the proceedings dated 3.10.1997, the Commercial Tax Officer, Purasawalkam Assessment Circle, the second respondent herein, issued a notice stating that the petitioner was in arrears of sales tax from 1992-93 to 1997-98. both under the Tamil Nadu General Sales Tax Act, 1959 and under the Central Sales Tax Act to the tune of Rs.16,79,374/- and Rs.3,20,760/- respectively, totalling to Rs.20,00,134/-. The Commercial Tax Officer, second respondent herein, called upon the petitioner to make the said payment.

6. As per the letter dated 7.10.1997, the petitioner replied that the said amount represented a benefit under the I.F.S.T. Deferral Scheme for the entire production from 1992-93 onwards. It was also stated in the letter that the petitioner came to know recently that they were eligible for deferral only on the production for the expansion made after 1991-92 i.e., from 1992-93. Before expansion, the petitioner's highest monthly sales of plastic goods was Rs.2.64 lakhs in a month. The total sales of plastic goods for the year 1991-92 was Rs.28.72 lakhs, including Central Sales Tax, which worked out to 35% of production from the then level of sales. Hence, the petitioner sought for permission to pay Rs.7,00,000/- i.e., 35% in equated monthly instalments of Rs.35,000/- in a month for 20 months. The petitioner expressed difficulty to pay the entire amount as a single time payment and that they had paid Rs.60 lakhs in August, 1997 immediately on notice of the mistake. Thus the petitioner sought for permission for payment on 35% of the production to be considered as requiring the base level payment and 65% as eligible for deferral. The petitioner also replied by another letter dated 7.10.1997, enclosing the working. It stated that the highest sales before availing the deferral was Rs.2.64 lakhs and the average highest sale would be Rs.31.68 lakhs. It was also stated that they had worked out the base level payment and the deferral available and hence, again reiterated the request for payment in 20 monthly instalments.

7. It is seen from the paper book produced before this Court that on 23.12.1997, the Commercial Tax Officer, second respondent herein, issued a garnishee proceedings to the Bank of India, Chennai Main Branch, to which the petitioner replied on 26.12.1997, indicating the extent of deferral availed by them. They stated that one of the conditions given in G.O.Ms.No.500 Industries (MIG-II) Department dated 14.5.1990 was that the deferral/waiver was only available for the goods manufactured into additional capacity by way of expansion. Considering the nature of manufacturing activity, the petitioner stated that it was not easily ascertainable from the

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books the exact quantum in metric tonnes of the goods produced after expansion. The petitioner pointed out that they had approached the T.I.I.C. for suitable amendment to incorporate the value of goods in respect of quantity in weight and that they were awaiting for orders. Considering the difficulties expressed, the petitioner prayed for withdrawal of the garnishee proceedings and allow them to continue the deferral as already availed.

8. By proceedings dated 8.5.2000, demand of interest was made at 2% on the belated payment under Section 24(2) of the Tamil Nadu General Sales Tax Act, 1959.

9. It is seen that the letter addressed to the Deputy Commissioner was also marked to the Assistant Commissioner, the third respondent herein, and the Commercial Tax Officer, second respondent herein. In the wake of the recovery proceedings taken, the assessee replied on 22.5.2000 that they had paid a sum of Rs.13,00,000/- as Equated Monthly Instalments and Rs.75,000/-, in addition to paying the entire sales tax from August, 1997, without availing the benefit of deferral scheme. It is also stated that since the respondents insisted on payment of a further sum of Rs.7,12,625/-, the petitioner filed O.P.Nos.242 to 244 of 1999 before the Tamil Nadu Taxation Special Tribunal. By order dated 14.6.1999, the Tribunal allowed the O.Ps. and set aside the order of demand. The assessee submitted that the demand of penal interest on the alleged belated payment till the sanction of deferral amount capacity was totally unsustainable. The petitioner pointed out that because of the bona fide impression that there was no necessity to make any payment, no sales tax was paid. It was also pointed out that they had already paid the tax due as per the calculation of the Revenue. Consequently, the petitioner submitted that the penal provision could not be attracted and hence, prayed for dropping further action.

10. On 20.5.2002, the Commercial Tax Officer, second respondent herein, issued a notice under Section 24(3) of the Tamil Nadu General Sales Tax Act, 1959. The series of orders passed, resulted in filing of further O.P. before the Tamil Nadu Taxation Special Tribunal in O.P.Nos.582 to 587 of 2002. By order dated 13.9.2002, the Tribunal dismissed the petition, stating that on the earlier round of litigation in O.P.No.242 to 244 of 1999, by order dated 14.6.1999, the Tribunal, setting aside the notice of demand, directed the respondent to re-work the outstanding amount and issue fresh notice. Accordingly, the excess availment was re-worked. For the delayed payment of the excess amount, penal interest under Section 24(3) of the Tamil Nadu General Sales Tax Act, 1959, was levied. The Tribunal held that the levy of penal interest was in order. Consequently, the O.Ps. were dismissed. Aggrieved of the said order, the petitioner has preferred the present writ petition

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before this Court.

11. Learned counsel appearing for the petitioner submitted that the Units of the petitioner were set up well before the date of G.O.Ms.No.119, Commercial Taxes and Religious Endowments Department dated 13.4.1994, which is prospective in nature. He submitted that this Court, in W.A.No.509 of 1994 by judgment dated 22.2.1995, was pleased to hold that the notification was prospective and applicable to those industries set up after the publication of the said notification. He referred to the clarification of the Special Commissioner dated 21.6.1995 which showed that the Department had accepted the decision in W.A.No.509 of 1994. When the assessee had commenced production as per the eligibility given, it was entitled to the benefit of deferral. He pointed out that the assessee was entitled to the full amount of deferral and that the mere fact of his paying the amount after the issue of notice would not entitle the Revenue to impose interest. He stated that when the tax itself was not payable as per the scheme of deferral of sales tax and that the payment itself was pursuant to the insistence of the Revenue, the action taken could not be upheld.

12. Learned counsel for the writ petitioner submitted that when G.O.Ms.No.500 Industries (MIG-II) Department dated 14.5.1990 alone governs the first two expansion units and there was no stipulation either in the agreement or in the certificate as regards the base level payment and that the assessee was granted deferral in respect of the capacity governed by the expanded unit, the question of payment of interest on an allegation of non-maintenance on base level payment did not arise. In this connection, learned counsel also pointed out a decision in the case of Thiagarajar Mills Limited, Singanallur Vs. The Assistant Commissioner (CT), Central Assessment Circle-I,, Coimbatore dated 22.2.1995. He stated that in the absence of any stipulation in the eligibility certificate or in the agreement, the question of payment on the base level production/sales as a condition for availing the benefit of deferral in respect of the expansion unit did not arise. This Court, while considering a similar prayer, quashed the demand and directed the assessing authority to re-determine the tax liability of the petitioner in respect of the expanded unit with reference to the existing units. In the face of the order, learned counsel for the petitioner submitted that the eligibility granted would be binding on the revenue and they cannot go beyond the eligibility granted for the purpose of demanding interest on the allegation that the assessee is not maintaining base level production.

13. It is not denied by the assessee that based on the demand made by the revenue, they had deposited the amount on the base level production which are to be maintained as per G.O.Ms.No.119 Commercial Taxes and Religious Endowments Department dated

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13.4.1994. However, considering the fact that the eligibility certificate is for the payment of tax in tune with G.O.Ms.No.119, Commercial Taxes and Religious Endowments Department dated 13.4.1994, the question that remains for consideration is, whether the assessee has to be mulcted with liability to pay interest in this case.

14. It is no doubt true that the principles governing the granting of deferral is with a view to encourage setting up of industries in backward and most backward areas notified under the Government Order. Having allowed the assessee to enjoy the benefit of deferral as per G.O.Ms.No.500 Industries (MIG-II) Department dated 14.5.1990, when the certificate of eligibility or the agreement did not specify the minimum payment on the base level production, is there a default in not paying on the base level production/sales?

15. Admittedly, the assessee was not put on notice as regards the base level payment of tax, even subsequent to the passing of G.O.Ms.No.119 Commercial Taxes and Religious Endowments Department dated 13.4.1994, either in the form of an intimation amending the agreement originally entered into in respect of the first units, or was there an intimation to the assessee to maintain the base level payment as per G.O.Ms.No.119 Commercial Taxes and Religious Endowments Department dated 13.4.1994. Nor is there anything in the eligibility or in the agreement as to the requirement of payment upto the base level production/sales. It may be seen that even though the eligibility certificates given for the first unit and the amended certificate stated that the benefit of IFST would be as per G.O.Ms.No.500 Industries (MIG-II) Department dated 14.5.1990 and other Government Orders that might be issued from time to time, the position remained unaltered without any intimation/reference through base level payment of tax.

16. It is however relevant to note that the Government Orders pertaining to the granting sales tax deferral scheme contemplated the eligibility with reference to the investment made under the expanded Unit and that the benefit is not to exceed the investment under the fixed assets. A reading of the eligibility certificate shows that the deferral of sales tax is on the sale of finished goods manufactured by the expanded Unit. A reading of this eligibility certificate in terms of the notification, thus make it clear that by granting deferral of sales tax in respect of expanded Units, while at the hands of the assessee, it is permitted to have the postponement of payment of tax liability to a future date, so that the expanded Unit in a most backward area does not suffer any cash crunch and that the investment in a backward area itself is an inducement to set up an industry thereby leading to a balanced growth; at the same time, by such encouragement, the Government is

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not to be deprived of its revenue from the existing Units. Hence, a purposive interpretation has to be given to the notification to see that in the grant of deferral of sales tax, the State is not deprived of the flow of revenue and at the same time, the assessee also enjoys the purport of the deferral as contemplated. Hence, keeping in mind the object of granting the deferral as well as the anxiety to have the regular flow of revenue to the State, the absence of any specification fixing the base level production and sale leading to a base level payment also need to be looked at from the standpoint of the assessee. It is no doubt true that this Court, in W.A.No.509 of 1994 by order dated 22.2.1995, held that industries which are set up after 13.4.1994 would only be covered by G.O.Ms.No.119 dated 13.4.1994 and the industries which were set up prior to the passing of G.O.Ms.No.119 dated 13.4.1994 would not come under the said Government Order. Consequently, the liability has to be fixed as per G.O.Ms.No.500 Industries (MIG-II) Department dated 14.5.1990. Admittedly, the assessee herein had its third Unit set up subsequent to the passing of G.O.Ms.No.119 dated 13.4.1994 and the other two Units were prior to the passing of G.O.Ms.No.119 dated 13.4.1994. Hence, taking note of the payment made by the assessee and the decision of this Court in W.A.No.509 of 1994 dated 22.2.1995 referred to above, and having regard to the conduct of the assessee in having a bona fide doubt as regards maintaining the base level payment, this Court considers that in the interest of justice, the plea of the assessee merits consideration sympathetically by the Revenue.

17. Learned counsel for the assessee pointed out to the power of the Government to grant waiver as regards the interest payable on the amount due. Section 16-B of the Tamil Nadu General Sales Tax Act, 1959, refers to the power to reduce or waive penalty in certain cases by the Commissioner of Commercial Taxes. Section 17 deals with the power to notify exemption and reduction of tax. Sub Section (4) of Section 17 specifies that the Government, by notification, could remit the whole or any part of the tax or penalty or fee payable in respect of any period by any dealer under this Act. Under Section 17-A(2), it is specifically stated that notwithstanding anything contained in the Act, the deferred payment of tax under sub section (1) or sub section (1-A) shall not attract interest under sub section (3) of section 24, provided the conditions laid down for payment of the tax deferred are satisfied. In the light of the genuine doubt raised in the mind of the assessee as regards the maintenance of base level payment and having regard to the fact that even after G.O.Ms.No.119 dated 13.4.1994 there was no intimation for maintaining the base level payment in respect of the two expanded Units, this Court feels that considering the power available with the Government, the case of the assessee be considered sympathetically.

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18. In the above circumstances, this Court hereby directs that even though the assessee had not paid the base level tax in terms of G.O.Ms.No.119 dated 13.4.1994, the Secretary to Government, Commercial Taxes Department, shall consider positively and sympathetically in terms of the Division Bench decision of this Court in W.A.No.509 of 1994 dated 22.2.1995, the appeal for waiver of interest payable on the amount of base level payment as per G.O.Ms.No.119 dated 13.4.1994. The assessee herein is directed to make the representation to that effect before the Secretary to Government, Commercial Taxes Department, Government of Tamil Nadu, within a period of four weeks from the date of receipt of a copy of this order and till orders are passed on the representation made by the assessee, there shall not be any coercive action in respect of the interest demanded under the recovery notice. Accordingly, the writ petitions are disposed of. No costs. Consequently, the connected W.P.M.P.Nos.59878, 59882, 59886, 59890, 59894 and 59898 of 2002 are closed.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

usk/ksv

To:

1. The Registrar
   Tamilnadu Taxation Special Tribunal
   Singaravelan Maligai, II Floor
   Chennai - 600 108

2. The Commercial Tax Officer
   Purasawalkam Assessment Circle
   Third Floor, Kuralagam Annexe
   Chennai - 600 108

3. The Assistant Commissioner (CT)
   Zone IV Chennai.

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4. The Secretary to Government
Commercial Taxes Department
Government of Tamilnadu
Chennai-9.

4 ccs to Mr.V. Sundareswaran, Advocate, Sr. 62075
1 cc to Spl. Government Pleader, (Taxes), Sr. 61543

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